

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2392 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT HI RAJYAGURU

Versus

MAHUVA NAGAR PALIKA

Appearance:

MR KB PUJARA for Petitioner

MR KETAN SHAH for MR KG VAKHARIA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner for an appropriate writ direction or order quashing and setting aside the order passed by the respondent municipality terminating the services of the petitioner with effect from May 31, 1987 vide its letter dtd.24.4.87 Annexure-F

to the petition and by directing the municipality to treat the petitioner in service without any break and to grant all consequential benefits including seniority and other benefits.

#. The case of the petitioner was that in pursuance of an advertisement July 10, 1985 for the post of Male Field Worker, the petitioner was interviewed on August 17, 1985 and he was appointed by an office order October 7, 1985. The petitioner joined the service of the respondent municipality on October 9, 1985. It was stated in the order of appointment that the petitioner was appointed in the pay scale of Rs.260-400 plus dearness allowance and other usual allowances only for a period of three months on temporary basis. Before the said period was over, the petitioner made an application on December 12, 1985m was stated by the petitioner himself that by an order dtd October 7, 1985, he was appointed as Male Field Worker on temporary basis for a period of three months but he should be made permanent. On March 1, 1986 the petitioner was informed that his work was not satisfactory. He was, therefore, asked to reach to the target. It was also stated that if he would not give satisfactory performance, the municipality would be constrained to terminate his services. By the impugned order, Annexure-F, the services of the petitioner were ordered to be terminated in pursuance of resolution dtd March 27, 1987 and he was informed that he would stand discharge with effect from May 31, 1987 after office hours. The said order was challenged in this petition. Initially notice was issued and ad interim relief was granted. After hearing the parties rule was issued Today the matter is called out for final hearing.

#. I have heard learned Advocate Mr.Pujara, for the petitioner and Mr.Ketan Shah for Mr.K.G.Vakharia, learned advocate for the respondent.

#. Mr.Pujara raised several contentions. He submitted that it was not true that the post was temporary or that the petitioner was appointed on probation. In the advertisement also, it was not stated that the post was temporary though he was appointed on temporary basis for a period of three months. He submitted that it is also not correct that the performance of the petitioner was not satisfactory. The performance of the petitioner was not only satisfactory but looking to the record, according to Mr.Pujara, he was found one of the best motivators and hence the action of terminating his services was illegal, improper and it was taken by way of penalty or punishment. Since no show cause notice was

issued, explanation was sought and principles of natural justice were observed, it was liable to be quashed and set aside. He also submitted that the action was malafide inasmuch as the father of the petitioner who was serving with the municipality was sought to be transferred and he filed an appeal and got the said order set aside which enraged the municipality, which resulted in passing order of termination against the petitioner. It was also submitted that in similar circumstances, one Nitaben as Female Field Worker was appointed and her services were not terminated which is violative of Articles 14 and 16 of the Constitution of India. Finally, it was submitted that in 1987, the petition was admitted and interim relief was granted. More than about 13 years have passed and not a single complaint was made against the work of the petitioner. In these circumstances, the petition deserves to be allowed by setting aside the order passed by the authority.

#. Mr. Shah for the respondent, on the other hand, supported the order passed by the authority. He submitted that the petitioner had no right to hold the post. In the order of appointment itself, in black and white, the petitioner was informed that his appointment was temporary for the period of three months. It was, therefore, open to the employer to terminate his services since the petitioner had no lien over the post. It was also submitted that the work of the petitioner was not found to be satisfactory and it was specifically stated in various communications. In affidavit-in-reply, it was made clear that the action was not taken by way of penalty or punishment and the order is not liable to be set aside. So far as malafide is concerned, it was submitted that the allegations which were made by the petitioners were specifically denied in the affidavit-in-reply. Mr. Shah, therefore, submitted that the petition is liable to be dismissed.

#. In the facts and circumstances of the case, in my opinion, it cannot be said that the municipality had no right to terminate the services of the petitioner. Looking to the appointment order, it is clear that the appointment of the petitioner was on temporary basis for a period of three months. Obviously, therefore, he had no right to hold the post. Moreover, the municipality had for the time being decided not to continue the post. Whether the post was permanent or that it was to be continued is not relevant so far as the right of the petitioner to hold the post is concerned. Since the appointment was for a particular period, such appointment could have been terminated by the municipality and the

action was taken. Regarding Nitaben, also in the affidavit in reply, it was submitted that her services also would be terminated with effect from June 30, 1987. It was stated by the petitioner in the affidavit-in-rejoinder that the service of Nitaben were also sought to be terminated illegally as the same was clearly by way of reaction to the petitioner filing the petition and getting the injunction. At the time of hearing of the petition, however, it was stated by Mr.Pujara, learned counsel for the petitioner that even today services of Nitaben have not been terminated. Of course, there is no evidence on the point nor further affidavit is filed to that effect. Be that as it may. so far as this court is concerned there is no record available regarding the appointment of Nitaben and terms and conditions of her appointment. In these circumstances it cannot be said that the action of the Municipality in not terminating services of Nitaben can be said to be illegal or contrary to the terms and conditions of the appointment.

#. Regarding malafide allegations levelled against the respondent have been specifically denied and obviously this court cannot go into the correctness or otherwise of allegations and counter allegations made by one party and denied by the other party. The petitioner's appointment was of temporary in nature and after the said period was over, his services were terminated. It cannot be said that the municipality has committed any illegality or the action is contrary to law and order suffers from arbitrariness.

#. For the foregoing reasons, the order passed by the municipality cannot be held illegal and the petition deserves to be dismissed. Rule is discharged. Interim relief is vacated with no order as to costs.

#. The learned counsel for the petitioner states that interim relief was granted in 1987 and is operative till today. The petitioner intends to approach higher forum. It was, therefore, prayed that some time may be granted to approach higher forum. Though it is objected by the learned counsel for the respondent, when interim relief has been continued since more than a decade, in my opinion ad interim relief should be ordered to continue upto 29th April. 2000. Order accordingly.